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Legislative Investigations: Safeguards for Witnesses

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LEGISLATIVE INVESTIGATIONS: SAFEGUARDS FOR WITNESSES: FOREWORD

Our plans for the Symposium postulate that a free and independent legislature is the hallmark of democracy, that the power of investigation is essential to proper discharge of legislative responsibilities, but that the investigative power has been abused¹ and that it is the obligation of the bar to find an answer to the resulting problem. It is our purpose to examine the problem objectively, without rancor or partisanship. We recognize, however, that abuses have occurred and the whole point of the Symposium is to make a contribution to the solution of the problem they have created.

Goaded by fear and hatred of Communism, some at times condone and even applaud abusive treatment of witnesses in legislative inquiries. But, whatever the provocation or seeming advantage, surrender of principle is the death of Justice and, without Justice, there is chaos or totalitarian dictatorship and, in either case, total disregard of the dignity and destiny of man. "In all that we do to combat subversion," said President Eisenhower last week, "it is imperative that

¹ See, for example, Senator Irving M. Ives, *In Place of Congressional Circuses*, N.Y. Times Magazine Aug. 27, 1950, p. 20 ("... the chief cause of the general disrepute into which Congressional inquiries have fallen — let us admit it outright —

we protect the basic rights of loyal American citizens.”² It is, however, impossible to protect the basic rights of loyal American citizens, as no doubt the President fully understands, unless we protect the basic rights of every man, woman and child in America. For no man’s rights are safe unless all men’s rights are respected.

From earliest times the legal profession has resisted oppression and oppressors. It faces now a challenge as insistent as any in its proud history. One aspect of the challenge we confront today: how to assure due process of law for witnesses in legislative investigations without unduly hampering legislative functions.

This is not a problem to be solved by denunciations, emotional appeals or catchwords. It demands hard thinking by all who love and serve the Law. The responsibility rests on the law schools no less than on the practicing bar. Today’s Symposium attests recognition here at Notre Dame of this joint responsibility.

Our Symposium reflects, moreover, the eloquence and zeal of the distinguished lawyer who will preside, for it was a speech by him which begot this meeting.³ I am proud to

is the fact that the Congress itself has allowed serious abuses to permeate the entire investigative process. Incompetence, publicity-seeking and barefaced political partisanship have characterized and stigmatized so many recent important Congressional investigations that the American people are rapidly becoming thoroughly disgusted with this essential adjunct to the lawmaking function of the Congress.”); Senator Estes Kefauver, *To What Extent Do Legislative Investigatory Powers Impinge On Civil Liberties?* address at American Bar Association convention Aug. 25, 1953 (“The great majority of all members of legislative bodies in this country want to carry on investigation properly, without embarrassing witnesses or holding them up to scorn or depriving them of any basic rights. We all recognize, however, that rights of people have been violated, that some Congressional inquiries have been haphazardly carried out and many persons have been harmed unnecessarily. I think the important problem is how to get the facts, and keep the public informed, while at the same time avoiding or at least holding to a minimum evils and pitfalls coming from investigations — of which we are all fully aware.”)

² N.Y. Times, Dec. 3, 1953, p. 2, col. 7.

³ Entitled, *A Call to Leadership*, the address was delivered April 18, 1952 before the Southwestern Legal Foundation in Dallas, Texas. See also Gossett, *Are We Neglecting Constitutional Liberty? A Call to Leadership*, 38 A.B.A.J. 817 (1952); *Editorial*, 38 A.B.A.J. 844 (1952).

present our Chairman, Mr. William T. Gossett, Vice-President and General Counsel of the Ford Motor Company.

*Joseph O'Meara**

LEGISLATIVE INVESTIGATIONS: SAFEGUARDS FOR WITNESSES:

INTRODUCTORY STATEMENT

I appreciate Dean O'Meara's generous introduction. But he has assigned me too much credit. My contribution to the progress of the Bar upon this subject has been small, although my interest is large. I am grateful for the opportunity to participate with so distinguished a group in this Symposium.

Of the current questions before the American people, none has agitated us more than those revolving around the use of the legislative investigative process. They have aroused the hottest flames of emotion and partisanship; and no subject is better calculated to turn friendly discussion into angry disputation.

This is not the first time that the investigative process has been scrutinized critically by the American people. But heretofore the issue has been for the most part a domestic affair, uncomplicated by international tensions and sharp ideological contrasts. Today the issue has global dimensions. It has been debated ceaselessly, not only in this country, but abroad. The conflict has grown in intensity and now is clearly audible across national boundaries and around the world.

The debate has confused our friends and comforted our foes. The decisions America makes on the questions involved will say much to the peoples of the world about the strength and stability of our institutions — about the road this country plans to take in the months and years ahead.

* Dean of the Law School, University of Notre Dame.